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BEFORE THE ARIZONA CORPORATION COMMISSION
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KRISTIN K. MAYES, Chairman
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AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:

DOCKET NO. S-20651A-09-0029

KYLE SCHMIERER, individually and doing
business as AMADIN, and JANE DOE
SCHMIERER, husband and wife,

**TEMPORARY ORDER TO CEASE AND
DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING**

Respondents.

NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY

EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondent KYLE SCHMIERER is engaging in or is about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act"), and that the public welfare requires immediate action.

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

Arizona Corporation Commission
DOCKETED

JAN 29 2009

DOCKETED BY

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II.**RESPONDENTS**

2. KYLE SCHMIERER ("SCHMIERER") is an individual residing in Phoenix, Arizona doing business under the trade name of Amadin and ATMA Study Film Productions LLC ("ATMA").

3. KYLE SCHMIERER may be referred to as "Respondent."

4. JANE DOE SCHMIERER has been at all relevant times the spouse of Respondent. JANE DOE SCHMIERER may be referred to as "Respondent Spouse." Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

5. At all relevant times, SCHMIERER has been acting for his own benefit and for the benefit or in furtherance of the marital community.

III.**FACTS**

6. From about November of 2007 through the present, SCHMIERER, doing business as Amadin and ATMA, has been seeking investors to invest a number of entertainment projects. SCHMIERER is a writer, producer and director of film, HD and video productions located in Phoenix, Arizona. SCHMIERER generally solicits different investment opportunities simultaneously using a number of different web-sites.¹ For example, at <http://profiles.friendster.com/26744860>, SCHMIERER represents that he is seeking "investors with \$3 million USD and up interested in very safe and very high return investment programs."

7. Using various websites and email solicitations, SCHMIERER, through Amadin and ATMA, offers several variations of investment opportunities to offerees and investors. All the investment opportunities offered by SCHMIERER, through Amadin and ATMA, involve raising

¹ <http://www.dgacontact.nl/taxonomy/term/183>; <http://www.go4funding.com>; <http://www.zenobank.com/clubs/amadin/>; <http://www.linkedin.com/pub/dir/kyle/schmierer>; http://www.indiegogo.com/individual/view/355?iggrref=IPJF_OWNER; <http://www.foundercontact.in/node/778>; <http://24framestudios.com/amadin/future.htm>; and <http://www.e-scension.com/video/video/show?id=985095:Video:15824>.

1 money to fund the production of films. Some of the investment opportunities provide the investor
2 with an interest in the film. Other investment opportunities use the investors' funds as collateral to
3 obtain loans. Once a loan is funded the investor will be paid their principal and return.

4 BUSINESS PLAN INVESTMENT

5 8. In October of 2008, in response to information on www.Amadin.biz, an Arizona
6 offeree sent an email to SCHMIERER seeking information about investment opportunities listed
7 on Amadin's website.

8 9. In November of 2008, SCHMIERER responded to the offeree by providing a
9 business plan describing the securities offering by SCHMIERER. Described in the business plan
10 SCHMIERER offers the opportunity to invest in units; 10,000 units at \$1,000 per unit. In the
11 business plan SCHMIERER represents that the investment funds will be used for the production,
12 marketing and distribution of an independent feature film. The investors' funds will be placed in
13 an escrow account and would only be released once the entire budget has been raised and
14 production begins on the film. The business plan includes a statement that if the film does not
15 begin production within 100 days of the designated date, the investment money would be returned
16 to the investors. There is no disclosure in the business plan as to what date has been designated.
17 The business plan did not include an anticipated date to begin production on the film. However, the
18 business plan states that the span of the film production is at least one year once the funding is
19 raised.

20 10. Further, the business plan states that the investors will receive 90 percent of the "net
21 producers' profits" until the initial investment is returned plus a "15 percent incentive" is paid. The
22 offering document does not define the term "net producers' profits." Once the investor receives 115
23 percent of their investment, the investors will then receive 50 percent of the "net producers'
24 profits." The business plan states investors could receive 213 percent return on their investment
25 over six years or investors could potentially make 1500 percent return on their investment if the
26 film becomes a "huge hit."

INITIAL DEVELOPMENT INVESTOR CONTRACT TO INVEST IN 'THE ATMA STUDY'
FEATURE FILM PROJECT

11. In December of 2008, SCHMIERER responded to further emails from an offeree with an opportunity to invest in a similar program as offered through the business plan. In order to invest, an investor would execute an "Initial Development Investor Contract to invest in 'The ATMA Study' feature film project" ("Initial Development Contract"). The Initial Development Contract provides details regarding a "private placement of equity securities" of ATMA. The Initial Development Contract states ATMA, the "Issuer," is offering 300 units of interests in the limited liability company at \$100,000 per unit ("Non-voting Membership Interests"). Although represented to be a limited liability company, no documents have been filed with the Arizona Corporation Commission for an Arizona limited liability company or to transact business in Arizona as a foreign corporation.

12. The Initial Development Contract investors "may" purchase three units for \$300,000. The investment funds are to be used for development costs and to secure full financing of the project.

13. Once full financing is secured by ATMA, the investors may request a buyout of their Non-voting Membership Interests. The term of the buyout is for 100 percent return on the investment (ie. \$600,000). Alternatively, the Initial Development Contract Investors may choose to reject the buyout and retain their Non-voting Membership Interests.

14. The Initial Development Contract states that the investors will be in "first position" and will receive 90 percent of the "net producers' profits" until the investor recoups 100 percent of their initial investment plus a 15 percent "incentive." The remaining 10 percent will be used for continual marketing and distribution until all investors' money is returned. After the investor receives 115 percent of their investment, the investors then share in 50 percent of the "net producers' profits."

15. The Initial Development Contract states that investors will "have no say in the running of the limited liability company." Further, SCHMIERER, the Manager of ATMA,

1 assumes total control over the running of the business and total artistic control over the
2 development, financing and the production of the film and its subsidiary products.

3 16. The Initial Development Contract discloses that the interests have not been
4 registered under federal or state securities acts and the investors will receive "restricted securities."
5 The restricted securities cannot be sold for at least one year without registering the interests under
6 federal or state securities laws.

7 OTHER INVESTMENT OPPORTUNITITES

8 17. In addition to the offerings described in the business plan and the Initial
9 Development Contract, SCHMIERER, through Amadin and ATMA, offered potential investors via
10 websites² and emails, the opportunity to double their money by investing funds that would be used
11 to pay expenses such as legal fees and applications fees or to use as collateral for loans. In this
12 type of investment, investors would receive 100 percent return on their investment within six to
13 twelve months upon processing of loans. The investors' role is to provide the investment funds and
14 wait for the return of their principal and the promised return. The investors' return is not contingent
15 upon the film's success. The investors receive their principal and return when the loans that
16 SCHMIERER is applying fund. SCHMIERER is seeking any investment amount up to \$800,000.

17 IV.

18 VIOLATION OF A.R.S. § 44-1841

19 (Offer and Sale of Unregistered Securities)

20 18. Since at least November of 2007, Respondent has been offering or selling securities
21 in the form of investment contracts and/or notes, within or from Arizona.

22 19. The securities referred to above are not registered pursuant to Articles 6 or 7 of the
23 Securities Act.

24 20. This conduct violates A.R.S. § 44-1841.

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² <http://www.go4funding.com> and <http://www.zenobank.com/clubs/amadin/>.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

21. Respondent is offering or selling securities within or from Arizona while not registered as a salesman pursuant to Article 9 of the Securities Act.

22. This conduct violates A.R.S. § 44-1842.

VI.

TEMPORARY ORDER

Cease and Desist from Violating the Securities Act

THEREFORE, based on the above allegations, and because the Commission has determined that the public welfare requires immediate action,

IT IS ORDERED, pursuant to A.R.S. § 44-1972(C) and A.A.C. R14-4-307, that Respondent, Respondent's agents, servants, employees, successors, assigns, and those persons in active concert or participation with Respondent CEASE AND DESIST from any violations of the Securities Act.

IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

IT IS FURTHER ORDERED that this Order shall be effective immediately.

VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondent to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;

2. Order Respondent to take affirmative action to correct the conditions resulting from Respondent's acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order Respondent to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that the marital community of SCHMIERER and Respondent Spouse is subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

5. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

Each respondent including Respondent Spouse may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. Rule 14-4-307. **If Respondent or Respondent Spouse requests a hearing, the requesting respondent must also answer this Temporary Order and Notice.** A request for hearing must be in writing and received by the Commission within 20 days after service of this Temporary Order and Notice. The requesting respondent must deliver or mail the request for hearing to Docket Control, Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary Order shall remain effective from the date a hearing is requested until a decision is entered.** After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order, with written findings of fact and conclusions of law. A permanent Order may include ordering restitution, assessing administrative penalties, or other action.

If a request for hearing is not timely made, the Division will request that the Commission make permanent this Temporary Order, with written findings of fact and conclusions of law, which may include ordering restitution, assessing administrative penalties, or other relief.

1 Persons with a disability may request a reasonable accommodation such as a sign language
2 interpreter, as well as request this document in an alternative format, by contacting Shaylin Bernal,
3 ADA Coordinator, voice phone number 602/542-3931, e-mail sbernal@azcc.gov. Requests should
4 be made as early as possible to allow time to arrange the accommodation.

5 **IX.**

6 **ANSWER REQUIREMENT**

7 Pursuant to A.A.C. R14-4-305, if Respondent or Respondent Spouse requests a hearing, the
8 requesting respondent must deliver or mail an Answer to this Temporary Order and Notice to
9 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
10 85007, within 30 calendar days after the date of service of this Temporary Order and Notice.
11 Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
12 Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

13 Additionally, the answering respondent must serve the Answer upon the Division.
14 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
15 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
16 Arizona, 85007, addressed to Wendy Coy.

17 The Answer shall contain an admission or denial of each allegation in this Temporary
18 Order and Notice and the original signature of the answering respondent or the respondent's
19 attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial
20 of an allegation. An allegation not denied shall be considered admitted.

21 When the answering respondent intends in good faith to deny only a part or a qualification
22 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
23 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

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BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 29 day of January, 2009.

Matthew J. Neubert
Director of Securities